UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:
Andrew Brave III,

Debtor.

Hearing Date: October 5, 2016
Hearing Time: 10:00 AM

Chapter 13
Case No. 16-22350-rdd

DEBTOR'S MOTION PURSUANT TO 11 U.S.C. §506(a): (1) VALUING AND FIXING THE SECURED INTERESTS OF MTGLQ INVESTORS, L.P. WITH RESPECT TO THE PROPERTY LOCATED AT 511 RAND STREET, CAMDEN, NJ 08105; AND (2) GRANTING RELATED RELIEF

TO: HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtor, Andrew Brave III (the "Debtor"), by his attorney, Natasha Meruelo, Esq., hereby submits this motion (the "Motion") for entry of an order pursuant to Sections 506(a) and 1322(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") and Rule 3012 of the Federal Rules of Bankruptcy Procedure, (1) valuing and fixing the secured interests or claim of MTGLQ Investors, L.P. (with and including any subsequent successor or assign, "MTGLQ") with respect to the property located at 511 Rand St , Camden, NJ 08105 (the "Investment Property"); and (2) granting related relief, together with such other and further relief as is just and proper under the circumstances. In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this proceeding to 28 U.S.C. § 157(a) and the Debtor avers that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Debtor further avers

that this Court has both personal and subject matter jurisdiction to hear this case pursuant to 28 U.S.C. § 1334.

2. Venue is proper pursuant to 28 U.S.C. § 1408 and 1409.
3. This motion is made pursuant to §§ 506(a) and 1322(b)(2) of the Bankruptcy Code and Bankruptcy Rule 3012.

Background

5. On March 18, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code and was assigned case no 16-22350 ("Bankruptcy Case").
6. Jeffrey L. Sapir has been appointed as Chapter 13 Trustee in these proceedings.
7. The Debtor has listed on his Schedule A – Real Property the real property located at 511 Rand St , Camden, NJ 08105 ("Investment Property"). Said property was purchased as an investment property by the Debtor on or about July 12, 2007. As indicated on the Debtor's schedules, there is a disputed mortgage lien against the Investment Property which was serviced on the Petition Date, upon information and belief, by Seterus, Inc. and now may be serviced by Shellpoint Mortgage Servicing (the "First Mortgage"). The Debtor is the only party to the promissory note related to the First Mortgage. Said First Mortgage was originally recorded in favor of IndyMac Bank, F.S.B., a federally chartered savings bank ("IndyMac") in the principal amount of $82,000.00.
8. At the time the First Mortgage was taken against the Investment Property, IndyMac and the Debtor contemplated that the Investment Property would be used as an income producing property upon which rents were collected as evidenced by the 1-4 Family Rider to the First Mortgage. A copy of the recorded Mortgage is annexed hereto as **Exhibit "A"**

9. The Debtor filed a prior Chapter 13 case on February 18, 2013, which was assigned case no. 13-22264 ("2013 Case").

10. During the 2013 Case, the issue that is the subject of this Motion was settled by the Debtor and Ocwen Loan Servicing, LLC ("Ocwen") and the parties agreed to a value of $40,000.00 for the Investment Property which was to be paid through the Debtor's Chapter 13 Plan at 5.25% interest for a total of $45,566.35 (the "Stipulated Order"). A copy of this Stipulated Order is attached hereto as **Exhibit "B"**. Said agreement was so-ordered by this Court on or about May 22, 2014.

11. Upon information and belief, the value of the Investment Property has not changed.

12. On or about July 1, 2016, MTGLQ filed Proof of Claim 6 in this Bankruptcy Case related to the First Mortgage and Investment Property.

13. The Debtor's goal and intention is to preserve the Investment Property and to use the rents generated to satisfy the mortgage payments on the First Mortgage.

14. Pursuant to 11 U.S.C. § 1325(a), the Debtor's Amended Chapter 13 Plan provides for payment of the First Mortgage at $40,000.00 over sixty months at 5.25% for a total of $45,566.35, which are the same terms provided for in the Stipulated Order.

Relief Requested and Basis for Such Requested Relief

11. By this Motion, the Debtor is seeking entry of an Order (1) valuing and fixing the secured interests of MTGLQ and its filed Proof of Claim 6 with respect to the Investment Property at $40,000.00 as set forth in the Stipulated Order and (2) granting related relief.

12. Section 506(a) of the Bankruptcy Code, in relevant part, states:

§ 506. Determination of secured status

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

13. Section 1322(b)(2) of the Bankruptcy Code, in relevant part, states:

§ 1322. Contents of plan

(b) Subject to subsections (a) and (c) of this section, the plan may--

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

14. The Debtor avers that section 1322(b)(2) of the Bankruptcy Code is inapplicable to the First Mortgage because he has never lived at the Investment Property, the Investment property has never solely been the debtor's principal residence and accordingly, the First Mortgage and Proof of Claim 6 modified as proposed by the Debtor's Amended Chapter 13 Plan and Stipulated Order.

15. Accordingly, the Debtor submits that the First Mortgage may be modified under the Debtor's Amended Chapter 13 Plan and respectfully requests entry of an order reducing the First Mortgage against the Investment Property to $40,000.00 and reclassifying the secured claim to be $40,000.00.

16. The Debtor also requests an order approving his proposed interest rate of 5.25% on the secured portion of the First Mortgage claim, as agreed upon in the Stipulated Order. Furthermore, the interest rate proposed in the Debtor's Plan meets the standard known as the "Till" interest rate, which was established in *Till v. SCS Credit Corp.*, 541 U.S. 465, 466,

468, 473, 124 S.Ct. 1951, 158 L.Ed.2d 787 (2004). The *Till* Court decided that the formula approach is the appropriate method for calculating interest on the secured portion of a loan and defined this as the national prime rate plus an additional risk adjustment rate, which accounts for the debtor's risk of nonpayment. *Id*. at 479, 124 S.Ct. 1951.

17. Courts generally have approved a risk adjustment rate of 1% to 3%. See *In re Martinez*, 409 B.R. 35, 42 (Bankr.S.D.N.Y.2009).

18. As of the Petition Date, the national prime rate was 3.5%. The Debtor's proposed 5.25% interest rate proposes to pay the Claim at the prime rate plus an additional risk adjustment rate of 1.75% and accordingly, the Debtor avers his proposed interest rate is fair, reasonable and consistent with applicable case law.

Notice

18. The Motion is being served upon:

    a. (1) Chapter 13 Trustee, Jeffrey Sapir, 399 Knollwood Road, White Plains, New York 10603

    b. (2) MTGLQ Investors, L.P c/o DRUCKMAN LAW GROUP PLLC, Attorneys for MTGLQ Investors, L.P, Attn: Stuart L. Druckman, Esq. or Mary Marsh, Esq., 242 Drexel Avenue, Westbury, New York 11590;

    c. (3) Robert W. Griswold, Esq., Shapiro, DiCaro & Barak, LLC, Attorneys for Seterus, Inc. as Servicer for MTGLQ, Investors, L.P., One Huntington Quadrangle, Suite 3N05, Melville, NY 11747(3)

    d. (4) MTGLQ Investors, L.P. c/o CT CORPORATION SYSTEM, 111 EIGHTH AVENUE, NEW YORK, NEW YORK, 10011, Registered Agent;

e. (5) MTGLQ Investors, L.P. c/o Shellpoint Mortgage Servicing, PO BOX 10826, Attn: Bankruptcy/Court Pleadings, Greenville SC 29603-0826;

f. (6) MTGLQ INVESTORS, L.P. c/o THE CORPORATION TRUST COMPANY, CORPORATION TRUST CENTER 1209 ORANGE ST, WILMINGTON, DE 19801; and

g. (7) Office of the United States Trustee, US Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10004.

The Debtor submits that such service is good and sufficient notice, as required by Bankruptcy Rules and L.B.R. 9013-1(c).

19. No previous application for the relief requested herein, other than the prior Stipulated Order approved by this Court, has been made to this or any other Court.

Conclusion

20. For the foregoing reasons, the Debtor respectfully requests that the Court enter the Proposed Order annexed hereto as Exhibit "C" and grant such other relief as the Court deems just.

Dated: White Plains, New York
July 29, 2016

____

Natasha Meruelo, Esq.
445 Hamilton Avenue, Suite 1102
White Plains, NY 10601
Tel: (914) 517-7565
Fax: (914) 470-6405